House of Lords
House of Commons

Joint Committee on Statutory Instruments

Third Report of Session 2019–21

Drawing special attention to:

The following 15 statutory instruments

Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order 2019 **(S.I. 2019/1302)**

Social Security (Switzerland) (Citizens' Rights Agreement) Order 2019 **(S.I. 2019/1303)**

Registered Designs and Trade Marks (Isle of Man) (Amendment) (EU Exit) Order 2019 **(S.I. 2019/1335)**

Magistrates' Courts (Amendment) Rules 2019 **(S.I. 2019/1367)**

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5A and Miscellaneous Amendments) Rules 2019 **(S.I. 2019/1368)**

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5B) Rules 2019 **(S.I. 2019/1369)**

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Accreditation of Forensic Service Providers (Amendment) Regulations 2019 **(S.I. 2019/1384)**

M11 Motorway (Junctions 8 to 90 (Offside Lane Restriction) Regulations 2019 **(S.I. 2019/1428)**

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 **(S.I. 2019/1440)**

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2019 **(S.I. 2019/1441)**

Anguilla Constitution (Amendment) (No.2) Order 2019 **(S.I. 2019/1461)**

Fishery Products (Official Controls Charges) (England) (Amendment) Regulations 2019 **(S.I. 2019/1474)**

Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 **(S.I. 2019/1476)**

Money Laundering and Terrorist Financing (Amendment) Regulations 2019 **(S.I. 2019/1511)**

Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 **(S.I. 2019/1514)**

Joint Committee on Statutory Instruments

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Lord Haskel *(Labour)*

Lord Morris of Handsworth (*Labour*)

Baroness Newlove *(Conservative)*

Lord Rowe-Beddoe (*Crossbench*)

Baroness Scott of Needham Market (*Liberal Democrat*)

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House of Commons

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Liz Twist MP *(Labour, Blaydon)*

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No.73, relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

ii that its parent legislation says that it cannot be challenged in the courts;

iii that it appears to have retrospective effect without the express authority of the parent legislation;

iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;

vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;

vii that its form or meaning needs to be explained;

viii that its drafting appears to be defective;

ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Liz Booth (Committee Assistant), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A OAA. The telephone number for general inquiries is: 020 7219 2026; the Committee’s email address is: jcsi@parliament.uk.

Contents

Instruments reported

At its meeting on 26 February 2020 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to 15 of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda, are published as appendices to this report.

1 S.I. 2019/1302: Reported for requiring elucidation and for defective drafting

Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order 2019

S.I. 2019/1303: Reported for requiring elucidation and for defective drafting

Social Security (Switzerland) (Citizens' Rights Agreement) Order 2019

1.1 **The Committee draws the special attention of both Houses to these Orders on the grounds that each requires elucidation in one respect and is defectively drafted in two respects.**

1.2 These Orders are made to give effect to international social security agreements between the United Kingdom and Switzerland on the one hand, and Iceland, Liechtenstein and Norway on the other (the Agreements). They are drafted in reliance on the same powers and in nearly identical terms. Article 2(1) and (2) of each Order identifies provisions which are "modified or adapted to the extent required to give effect to" the Agreements. While the enabling powers allow such modifications to be made, they exclude modification to a few specified benefits, such as Christmas bonus and statutory sick pay. In the absence of express provision or explanatory comment, it was not clear to the Committee whether the broad wording of Article 2 was intended to exclude these specified benefits from the ambit of the Orders. The Committee asked the Department for Work and Pensions to clarify its intent on this point. In a memorandum printed at Appendix 1, the Department clarifies that it does not intend to rely on these Orders to make any modifications to the benefits in question. **The Committee is grateful for the Department's clarification and accordingly reports Article 2(1) and (2) of each Order for requiring elucidation, provided by the Department's memorandum.**

1.3 In a similar vein, the enabling powers permit modification only to Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999. It was not clear to the Committee whether Article 2(4), which refers to the 1999 Order and does not exclude any Part of it, was intended to apply the modifications to the 1999 Order in its entirety. It asked the Department to clarify. In its memorandum, the Department confirms that Article 2(4) of each Order should have restricted the modifications to Part III of the 1999 Order. **The Committee accordingly reports Article 2(4) of each Order for defective drafting, acknowledged by the Department.**

1.4 Neither Order makes specific changes to any domestic provision but only provides generally that the listed provisions are, as noted above, "modified or adapted to the extent required to give effect to" the Agreements. It appeared to the Committee that this was not permitted by the relevant enabling power, which only allows legislation to be "modified" if it is done in a general rather than a specific way. The Committee asked the Department what enabling power it relied on to "adapt" the listed provisions. In its memorandum, the Department acknowledges that the words "or adapted" should not have been included in Article 2(1) of either Order. **The Committee accordingly reports Article 2(1) of each Order for defective drafting, acknowledged by the Department.**

1.5 The Department notes that the agreement with Iceland, Liechtenstein and Norway was made redundant by the Withdrawal Agreement and will be revoked, and that the agreement with Switzerland will not come into force until the implementation period has ended. The Department undertakes to keep the position under review and amend the defects if the Order comes into force. The Committee is grateful for this undertaking, and for the Department's undertaking to share the Committee's comments where they relate to similar instruments.

2 S.I. 2019/1335: Reported for defective drafting

Registered Designs and Trade Marks (Isle of Man) (Amendment) (EU Exit) Order 2019

2.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

2.2 Schedule 2 to this Order amends the Trade Marks (Isle of Man) Order 2013 in anticipation of the withdrawal of the United Kingdom from the European Union. It appeared to the Committee that the amendment purported to be made by paragraph 5 of that Schedule related to provisions that did not appear in the 2013 Order. The Committee asked the Department for Business, Energy and Industrial Strategy to confirm that this was an error. In a memorandum printed at Appendix 2, the Department confirms that the drafting is defective, apologises for the error, and undertakes to correct it by amending instrument. **The Committee accordingly reports paragraph 5 of Schedule 2 for defective drafting, acknowledged by the Department.**

3 S.I. 2019/1367: Reported for defective drafting

Magistrates' Courts (Amendment) Rules 2019

3.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in two respects.**

3.2 These Rules amend the Magistrates' Courts Rules 1981 to take account of modern methods of communication. The Committee asked the Ministry of Justice to explain when a summons served in accordance with paragraphs (1)(e) and (j) (of new rule 99 inserted by rule 8) is deemed to have been received by the person. In a memorandum printed at Appendix 3, the Department asserts that the mode of electronic service referred to in these paragraphs is considered to result in actual service (which can be proved by reference to a computer system operating normally) so no issue of deemed service arises. The Committee does not understand why the Rules include a provision deeming service where a document is handed to a person (which must also result in actual service) but not where electronic service is used. The Committee considers a provision deeming service for a summons served in accordance with paragraphs (1)(e) and (j) should have been included in the Rules in order to ensure internal consistency. The Department undertakes to consider this in due course; in the meantime, **the Committee reports rule 8 for defective drafting.**

3.3 The Committee also asked the Department to explain what criteria are intended to be applied in determining whether a person holds a "senior position" for the purposes of new rule 99(1)(a) (inserted by rule 8) and new rule 115(2)(a) (inserted by rule 10) (including, in particular, whether it is proposed to issue guidance similar to Practice Direction 6A). In its memorandum, the Department explains that the definition in Practice Direction 6A supporting the Civil Procedure Rules is not a complete description and that it is better to leave the term undefined so that it can be interpreted in accordance with its normal English meaning. The Committee does not believe that "senior position" has a sufficiently clear natural language meaning in this context to permit of its legislative use without some kind of definition or criteria. The Committee notes the Department's undertaking to consult on whether such provision should be made when the Rules are next amended, but observes that this is not a matter of policy choice on which consultation is appropriate, but of ensuring that language used in legislation is sufficiently clear and certain to be fit for purpose. **The Committee accordingly reports rules 8 and 10 for defective drafting.**

4 S.I. 2019/1368: Reported for requiring elucidation

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5A and Miscellaneous Amendments) Rules 2019

S.I. 2019/1369: Reported for requiring elucidation

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5B) Rules 2019

4.1 **The Committee draws the special attention of both Houses to these Rules on the ground that each set requires elucidation in two respects.**

4.2 These Rules establish the court procedures that apply in relation to powers for the recovery of proceeds of crime (including freezing of money in bank accounts and seizure of other assets) in connection with international cases. Rule 10(1) of S.I. 2019/1368 and rule 9(1) of S.I. 2019/1369 make provision for giving documents by post. The conditions in each rule are that the document must be properly addressed, prepaid, and posted to an address either given by a person under the Rules or listed in the relevant table. The Committee recently received a memorandum from the SI Hub (published as the Committee's First Special Report of Session 2019–20) on the subject of section 7 of the Interpretation Act 1978: the view of the SI Hub is that provisions which specify a proper address expressly do something that is contemplated by that section, and that "'properly addressing' for the purposes of section 7 at least includes using an appropriate, or 'proper' address." The Committee was therefore surprised that rules 10(1) and 9(1) required both that the document be properly addressed and that it be sent to an appropriate address. The Committee asked the Ministry of Justice to explain what is meant in these rules by the wording "properly addressing", having regard to the SI Hub's memorandum. In a memorandum printed at Appendix 4, the Department asserts that in this context section 7 is disapplied by a provision "which covers the same ground in essentially the same words" as section 7, and that in this provision the concept of "properly addressing" does not include sending to a proper address, which is covered separately. The SI Hub's memorandum responded to an invitation to the Government by the Committee to articulate and apply a single consistent approach to the concept of "properly addressing" in section 7. The Committee notes that this instrument appears to depart from the Government's general approach of including choice of address in the notion of "properly addressing", by dealing with choice of address separately in the way described in the Department's memorandum. **The Committee accordingly reports regulations 9(1) and 10(1) for requiring elucidation, provided by the Department's memorandum.**

4.3 Rule 9 of S.I. 2019/1368 and rule 8 of S.I. 2019/1369 provide for the acceptable means by which a document relating to these procedures may be served. They are: by post; by electronic means; or by any method authorised by the court. The Committee asked whether it was intended that a person has a right to effect personal service without the courts' permission. In its memorandum, the Department confirms that "there was no intention to make personal service possible other than if authorised by the court". The Department undertakes to consider, together with the Home Office, "whether there should be a change in the approach to permit personal service as a 'primary' method of service without any need for the court to authorise it". **The Committee is grateful for this undertaking and reports these rules as requiring elucidation, provided by the Department's memorandum.**

5 S.I. 2019/1384: Reported for requiring elucidation

Accreditation of Forensic Service Providers (Amendment) Regulations 2019

5.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

5.2 These Regulations amend the Accreditation of Forensic Service Providers Regulations 2018 in relation to certain laboratories that carry out laboratory activity (that results in a DNA-profile or fingerprint data) on items that require specialist handling and containment due to the presence of hazardous materials. In these circumstances, the requirement for accreditation will be satisfied if the laboratory activity is carried out by or under the supervision of a "relevant employee" employed by an accredited forensic service provider for the purpose of carrying out that laboratory activity (regulation 2(2) and (3)). The Committee asked the Home Office whether the "relevant employee" is required to have a certain level of competence and experience and whether the supervision by that employee is intended to impose a requirement that such employee be present when the laboratory activity is carried out. In a memorandum printed at Appendix 5, the Department explains that competence is the key consideration for individuals who will supervise such laboratory activity irrespective of seniority by grade or rank or years of experience and that it is not intended to impose a requirement that the individual be physically present when carrying out the supervision. **The Committee finds that explanation helpful and accordingly reports regulation 2(2) and (3) for requiring elucidation, provided by the Department's memorandum.**

6 S.I. 2019/1428: Reported for defective drafting

M11 Motorway (Junctions 8 to 90 (Offside Lane Restriction) Regulations 2019

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

6.2 These Regulations prohibit the daytime use by heavy commercial vehicles of the offside lane of part on the M11 motorway except where (among other things) changing lanes could cause "inconvenience to other traffic" (regulation 3(2)(a)). In response to the Committee's question, the Department for Transport (in a memorandum printed at Appendix 6) confirms that the exception is likely to apply only in so far as inconvenience to other traffic is due solely to a reduction in speed. The Committee considers that "inconvenience" is not apt to convey the Department's policy for two reasons: (a) the term "inconvenience" could cover situations that do not involve a reduction in speed; and (b) a reduction in speed might not naturally fall to be considered an inconvenience, depending on the precise situation. The Committee believes that if the Department's policy is for the exception to be determined by reference to whether a change of lanes necessitates a reduction in speed, the drafting should have reflected that intention. **The Committee accordingly reports regulation 3(2)(a) for defective drafting.**

7 S.I. 2019/1440: Reported for requiring elucidation and for defective drafting

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019

7.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in one respect and are defectively drafted in one respect.**

7.2 These Regulations amend domestic legislation governing the EU-wide carbon trading scheme to reflect changes to the operation of the scheme in its next phase, which will begin on 1 January 2021. The current scheme includes an opt-out for low emitters (Article 27 installations). The new scheme introduces a similar opt-out for ultra-low emitters (Article 27a installations), which is implemented in domestic legislation by these Regulations. Each of these opt-outs operates by reference to conditions attached to a relevant permit. In the new Schedule 5A inserted by the Schedule to these Regulations, paragraph 3 allows the operator of an Article 27a installation to comply with the less stringent conditions of an alternative permit if they notify the regulator. Paragraph 3(2) requires that a notice in relation to the second allocation period be received by 31 August 2024 but is silent as to any deadline that applies in relation to the first allocation period. The Committee asked the Department for Business, Energy and Industrial Strategy to explain the omission. In a memorandum printed at Appendix 7, the Department explains that the initial deadline for the first allocation period had passed before these Regulations were made and notes that the absence of a deadline means a notice may be given in relation to the first allocation period throughout that period. **The Committee finds this explanation helpful, and accordingly reports paragraph 3 of Schedule 5A, as inserted by the Schedule to these Regulations, for requiring elucidation, provided by the Department's memorandum.**

7.3 Paragraph 5(3) of new Schedule 5A imposes a deadline by reference to "the date specified in paragraph 2(2)(a) or (b)". Neither of those sub-paragraphs appeared to the Committee to specify a date. It asked the Department to confirm whether the cross-reference was correct. In its memorandum, the Department acknowledges that the cross-reference is incorrect and notes that the error has already been corrected in S.I. 2020/18 (on which the Committee had no comments in its Second Report of Session 2019–2021). **The Committee commends the Department for having taken such rapid remedial action, and accordingly reports paragraph 5(3) of Schedule 5A, as inserted by the Schedule to these Regulations, for defective drafting, which has been remedied by the Department.**

8 S.I. 2019/1441: Reported for defective drafting

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2019

8.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

8.2 This instrument changes some of the criteria for the energy efficiency measures that qualify towards meeting the home-heating cost reduction target set for certain licensed gas and electricity suppliers under the Electricity and Gas (Energy Company Obligation) Order 2018. Article 7 substitutes Article 18 of the 2018 Order and sets out requirements to be met by measures in order to be qualifying actions relating to installation standards including, in cases where the measure is not referred to in the Publicly Available Specification (PAS), that the measure is installed by a person of "appropriate skill and experience".

8.3 The Committee asked the Department for Business, Energy and Industrial Strategy to explain by whom and by reference to what criteria it is intended to be determined whether a person is of "appropriate skill and experience". In a memorandum printed at Appendix 8, the Department explains that it has published draft guidance applying to measures installed on or after 1 January 2020 but gives no indication of what would constitute "appropriate skill and experience" of the installer. The Committee does not believe that "appropriate" has a sufficiently clear meaning in this context to allow its legislative use without the provision of criteria. **The Committee accordingly reports article 7 for defective drafting.**

9 S.I. 2019/1461: Reported for requiring elucidation

Anguilla Constitution (Amendment) (No.2) Order 2019

9.1 **The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in two respects.**

9.2 This Order amends the constitution of Anguilla to clarify that certain persons must be British Overseas Territories citizens to qualify as Anguillians (article 2). The Committee asked the Foreign and Commonwealth Office to explain why the change effected by article 2 is retrospective. In a memorandum printed at Appendix 9, the Department explains that the British Overseas Territories citizenship criterion for one limb of the test for status was unintentionally omitted from the Anguilla Constitution (Amendment) Order 2019. This left a period within which certain persons were eligible for Anguillian status without also having to be British Overseas Territories citizens. This Order corrects that omission and the retrospective effect of article 2 ensures legal certainty about the law concerning the acquisition of Anguillian status. **The Committee accordingly reports article 2 for requiring elucidation, provided by the Department's memorandum.**

9.3 The Committee also asked the Department to explain what power was being relied on for this retrospective effect. In its memorandum, the Department explains that the power relied on is section 1(2) of the Anguilla Act 1980, which states: "Her Majesty may by Order in Council make such provision as appears to Her expedient for and in connection with the government of Anguilla". The Department also argues (presumably because the preamble refers to powers "or otherwise in Her Majesty vested") that Article 9 of the Anguilla Constitution Order 1982 is relevant ("Her Majesty reserves to Herself power, with the advice of Her Privy Council, to makes laws for the peace, order and good government of Anguilla".) The Department relies on *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61 and *Sabally and N'Jie v Attorney General* [1965] 1 QB 273 as authority for the proposition that the power to legislate for the purposes of "peace, order and good government" permits retrospective provision, despite the general presumption against retrospection. The Committee accepts the Department's helpful explanation and accordingly **reports article 2 for requiring elucidation in this respect, provided by the Department's memorandum.**

10 S.I. 2019/1474: Reported for defective drafting

Fishery Products (Official Controls Charges) (England) (Amendment) Regulations 2019

10.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

10.2 These Regulations update references to EU legislation in an existing domestic instrument, including by adding references to new EU instruments and creating new definitions for the EU instruments thus referred to. It appeared to the Committee that the new defined term "Regulation 2019/624", inserted by regulation 3(a) of and the Schedule to these Regulations, was unnecessary, as apart from the definition there was no reference to that Regulation in the amended domestic instrument. The Committee queried why the definition was included. In a memorandum printed at Appendix 10, the Food Standards Agency acknowledges that the defined term is superfluous and undertakes to remove it at the earliest opportunity. **The Committee accordingly reports Regulation 3(a) of and the Schedule to these Regulations for defective drafting, acknowledged by the Department.**

11 S.I. 2019/1476: Reported for defective drafting

Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019

11.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

11.2 These Regulations update references to EU legislation in the Official Feed and Food Controls (England) Regulations 2009 (the 2009 Regulations), including by adding references to new EU instruments and inserting new definitions for the EU instruments thus referred to. Regulation 2 of the 2009 Regulations is an interpretation provision: it includes a list of short titles for the EU instruments referred to elsewhere and cross-refers to the definition of each instrument so listed, which is in Schedule 1 to the 2009 Regulations. Regulation 3(a)(ii) of these Regulations substitutes an updated list of short titles, but without the words "have the meanings respectively given to them in Schedule 1". The effect is that these words are deleted from the 2009 Regulations. The Committee asked for confirmation that this cross-reference should have been included. In a memorandum printed at Appendix 11, the Food Standards Agency confirms that it should and undertakes to correct the error at the next available opportunity. **The Committee accordingly reports regulation 3(a)(ii) for defective drafting, acknowledged by the Department.**

12 S.I. 2019/1511: Reported for defective drafting

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

12.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

12.2 These Regulations update the United Kingdom's existing anti-money laundering legislation to implement amendments made to the EU's money laundering framework. Regulation 8 (inserted new regulation 74C(1)) allows the Financial Conduct Authority (FCA) to impose a direction on a cryptoasset business. The Committee asked HM Treasury to explain why the provisions in regulation 74C(9) to (16) and (20) do not apply to a direction imposed under regulation 74C(1). In a memorandum printed at Appendix 12, the Department explains that paragraph (5) (imposition of a direction on the FCA's own initiative) and (6) (imposition of a direction by the FCA on the request of the cryptoasset business) of new regulation 74C are not intended to be distinct from the power referred to in paragraph (1) but rather to particularise the manner in which such a direction may be imposed. Where the FCA imposes a direction on its own initiative paragraphs (9) to (16) and (20) will apply and where the FCA imposes a direction on the request of a cryptoasset business paragraphs (17) to (20) will apply. The Treasury accepts that regulation 74C could have been clearer and undertakes to amend the instrument at the earliest opportunity. **The Committee accordingly reports regulation 8 for defective drafting, acknowledged by the Department.**

13 S.I. 2019/1514: Reported for defective drafting, for requiring elucidation and for doubtful vires

Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019

13.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in three respects, that they require elucidation in two respects, and that there is doubt as to whether they are *intra vires* in one respect.**

13.2 These Regulations extend civil marriage to same-sex couples and civil partnership to opposite-sex couples in Northern Ireland, and they make various consequential amendments across Northern Ireland legislation to reflect these changes.

13.3 Regulation 15 amends the form that a couple intending to marry must serve on the registrar as notice of that intent. Regulation 15(k) inserts a new Part F into the form, which a couple should fill in if they intend to have a humanist celebrant conduct the ceremony. The form requires the parties to make a declaration that they "intend to be married … by the officiant named at Part E". Regulation 15 makes no amendment to this declaration. The Committee was concerned that this omission meant the form would not accurately reflect the new regime. It asked the Northern Ireland Office to explain the omission. In a memorandum printed at Appendix 13, the Department acknowledges the discrepancy and undertakes to work with the Northern Ireland Executive to ensure that the necessary amendments are made to the prescribed form. **The Committee accordingly reports regulation 15 for defective drafting, acknowledged by the Department.**

13.4 Regulation 56(6)(c) inserts a provision to permit an existing rule-making power to be used to make different provision for different purposes. The Committee asked the Department to identify the enabling powers relied on to include this regulation. In its memorandum, the Department states that the enabling powers relied on are section 8(3), 4(c) and 7(d) read (if necessary) with section 11 of the Northern Ireland (Executive Formation) Act 2019 (the 2019 Act). The Committee is not persuaded. The power conferred by section 8(3) is broad and includes power to confer a discretion, but it does not include power to confer a power to make different provision for different purposes (in contrast to section 11 which allows the power itself to be used to make different provision for different purposes). A power to make different provision for different purposes is never to be assumed, as it amounts in effect to a qualification on the common law presumption against arbitrary application of statutory powers; but in the case of Northern Ireland subordinate legislation the power is expressly conferred by section 17(5)(b)(ii) of the Interpretation (Northern Ireland) Act 1954. So it was unnecessary to include this provision (and for the reasons given if it were not superfluous it would probably be *ultra vires*). **The Committee accordingly reports regulation 56(6)(c) for defective drafting.**

13.5 The amendments made by regulations 67(1) and 109(1) omit provisions that make the wife or husband of the accused in criminal proceedings competent, but not compellable, to give evidence for or against the accused. The Committee was curious as to the grounds on which this was considered to be appropriate in view of the extension of same-sex marriage and opposite-sex civil partnership. It therefore asked the Department to clarify which specific enabling powers are relied on and the reasons for these amendments. In its memorandum, the Department states that the enabling power relied on is s.8(3) of the 2019 Act, and that the provisions are made to ensure that the new categories of relationship are brought in line with existing civil partnerships and to create a uniform code. **The Committee finds this explanation helpful and accordingly reports regulations 67(1) and 109(1) for requiring elucidation, provided by the Department's memorandum.**

13.6 Regulation 68(6) confers a broad power to make regulations that "modify or disapply any enactment", which would include making amendments to primary legislation. It appeared to the Committee that while the powers conferred by the 2019 Act would permit the Secretary of State to make regulations that amend primary legislation, they did not go so far as to permit the Secretary of State to confer the same power on another person. The Committee therefore asked the Department to clarify which enabling powers it relied on to make this provision. In its memorandum, the Department accepts that the better argument is that the 2019 Act does not permit sub-delegation of a power to amend primary legislation and undertakes to inform the relevant Northern Ireland Department of the issue and the need to rectify the position. **The Committee acknowledges the Department's undertaking, and accordingly reports regulation 68(6) for doubt as to whether it is *intra vires*, acknowledged by the Department.**

13.7 Regulation 122(3) inserts into Section 2 of the Principal Civil Service Pension Scheme (Northern Ireland) 1981 a gloss intended to reflect the new relationships legally recognised as a result of these Regulations. Section 2 is drafted in a way that distinguishes applicable benefits expressly by sex, with some provisions granting "widows' and dependants' benefit" in relation to "all male pensionable civil servants" and others granting "widowers' benefit" in relation to "all female pensionable civil servants". The gloss in new rule 4.79A provides that it does not matter whether the civil servant or their partner is a man or a woman, and that a surviving civil partner is entitled to a widow's or a widower's pension but not both. Given that there appeared to be distinctions between widows' and widowers' benefit under this part of the Scheme, it was not clear to the Committee how a person would determine which of the benefits they were entitled to if applying the gloss meant there was no distinction between a male and a female pensionable civil servant. It asked the Department to explain. In its memorandum, the Department explains that widows' and widowers' entitlements under this part of the Scheme have been equalised, and that the second part of rule 4.79A is only intended to prevent double entitlement. **The Committee finds this explanation helpful and accordingly reports regulation 122(3) for requiring elucidation, provided by the Department's memorandum.**

13.8 Also in relation to regulation 122(3), the Committee asked the Department to explain whether certain sex-specific provisions of Section 2 were intended to be modified by the gloss so that they include opposite-sex civil partnerships between the surviving civil partner and a third party. In its memorandum, the Department acknowledges that it has discovered amendments made to the Scheme in 2016 that are not reflected in the amendments made by regulation 122, and which may affect its reply to the Committee's question. The Department undertakes to take steps to amend the Regulations as soon as possible to correct the error. **The Committee accordingly reports regulation 122 for defective drafting, acknowledged by the Department.**

13.9 Regulation 133(3) creates a new exemption to Article 30(1) of the Sex Discrimination (Northern Ireland) Order 1976, which makes it unlawful for "any person" concerned with providing goods, services, etc. to the public to discriminate against a woman by refusing to provide them to her. Under the new exemption, Article 30(1) is not contravened by "an organised religion, or a person acting on behalf of or under the auspices of an organised religion … [where] the religion or person—(a) does not provide, arrange, facilitate, or participate in, or (b) is not present at, a ceremony or event to mark the solemnisation of" a same-sex marriage or a civil partnership. The phrase "organised religion" is not defined. The Committee asked the Department to explain how actions could be imputed to "an organised religion" so as to contravene Article 30(1) of the 1976 Order. In its memorandum, the Department cites section 37 of the Interpretation Act (Northern Ireland) 1954, which provides that references to persons include male and female persons, corporations and unincorporated bodies, and that the singular includes the plural. The Department argues that if an organised religion is not a person by virtue of being a body corporate, its adherents are persons, or it is an unincorporated body of persons. The Committee finds none of these arguments persuasive. It seems to the Committee that each of these constructions, and all the Department's examples, would have been caught by the reference in the new exemption to "a person acting on behalf of or under the auspices of an organised religion". It also notes that the offence in Article 30(1) only applies to a person, so to the extent that an organised religion is not a person as defined by the 1954 Act (which, as noted above, includes an unincorporated body), it would not be liable for the offence and so would need no exemption. The Department states that it used the term "organised religion" undefined for consistency with Article 21 of the 1976 Order. That Article provides that it is not unlawful to apply a requirement in relation to employment, or to an authorisation or qualification, where the employment or authorisation or qualification "is for the purposes of an organised religion" (emphasis added). The Committee has no difficulty with an undefined reference to organised religion in the context of Article 21 of the 1976 Order; but that is very different from purporting to exempt an undefined socio-cultural system from having committed an unlawful act. The Committee is clear that the exemption is unnecessary, and that if it were required an undefined reference to "organised religion" would be insufficiently clear and certain in the context. **The Committee accordingly reports regulation 133(3) for defective drafting.**

13.10 The Committee noticed that regulations 159 and 160 amend definitions of "relative" in different ways, even though the same definition is used in each of the instruments being amended. It asked the Department to explain why. The Department acknowledges that this was not intentional and undertakes to correct the error. **The Committee accordingly reports regulations 159 and 160 for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 26 February 2020 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Instrument requiring affirmative approval

S.I. 2020/129	Health Protection (Coronavirus) Regulations 2020

Draft instruments requiring affirmative approval

Draft S.I.	Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2020
Draft S.I.	National Minimum Wage (Amendment) (No. 2) Regulations 2020
Draft S.I.	Licensing Act 2003 (Victory in Europe Day Licensing Hours) Order 2020
Draft S.I.	Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2020

Instruments subject to annulment

S.I. 2019/1351*	Local Government Pension Scheme (West Midlands Integrated Transport Authority Pension Fund and West Midlands Pension Fund Merger) Regulations 2019
S.I. 2019/1475**	Meat (Official Controls Charges) (England) (Amendment) Regulations 2019
S.I. 2020/40	Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020
S.I. 2020/43	Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment etc.) (England) Regulations 2020
S.I. 2020/46	Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2020
S.I. 2020/47	M6 Motorway (Junctions 2 to 4) (Variable Speed Limits) Regulations 2020
S.I. 2020/52	Veterinary Surgeons (Recognition of University Degree) (Surrey) Order of Council 2020
S.I. 2020/56	Financial Services (Consequential Amendments) Regulations 2020

S.I. 2020/58	Merchant Shipping (Technical Requirements for Inland Waterway Vessels) (Amendment) Regulations 2020
S.I. 2020/67	Adult Skills (Specified Qualification in Information Technology) (Amendment) Regulations 2020
S.I. 2020/68	M62 and M606 Motorways (Chain Bar Roundabout) (Car Share Lane) (Revocation) Regulations 2020
S.I. 2020/77	Immigration and Nationality (Fees) (Amendment) Regulations 2020
S.I. 2020/78	Police (Conduct) (Amendment) Regulations 2020
S.I. 2020/106	Utilities Act 2000 (Amendment of Section 105) Order 2020
S.I. 2020/112	Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2020

Draft Instrument subject to annulment

Draft S.I.	Wiltshire (Electoral Changes) Order 2020

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2020/87	Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (Appointed Day No. 1) (EU Exit) Regulations 2020
S.I. 2020/97	Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 7 and Transitory Provisions) (EU Exit) Regulations 2020

* The Committee asked for a memorandum on this instrument and a satisfactory response was received. The memorandum is published as Appendix 14 to this Report.

** The Committee asked for a memorandum on this instrument and a satisfactory response was received.

Appendix 1

S.I. 2019/1302

Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order 2019

S.I. 2019/1303

Social Security (Switzerland) (Citizens' Rights Agreement) Order 2019

1. In its letter to the Department of 6 February 2020, the Committee requested a memorandum on the following:

> *(1) Clarify whether, in relation to article 2 of each Order:*
>
> a) *the modifications made to the Social Security Administration Act 1992 by virtue of paragraph (2)(a) are intended to include modifications in relation to the benefits listed in section 179(4)(b) of that Act;*
>
> b) *paragraph (4) is intended to apply paragraph (1) to the whole of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, or only to Part 2 of that Order.*
>
> *(2) Having regard to the apparent differential use of "modifying" and "adapting" in s.179(2), clarify, in relation to both Orders, what enabling power is relied on to provide generally that the legislation to which article 2(1) applies is adapted to give effect to the relevant agreement.*

2. In response to question (1)(a), the modifications made to the Social Security Administration Act 1992 by virtue of article 2(2)(a) and to the Social Security Contributions and Benefits Act 1992 by virtue of article 2(2)(b) of each Order do not include modifications to the five benefits listed in the fullout words of section 179(4) of the Social Security Administration Act 1992. The five benefits listed in fullout words of section 179(4) of the Social Security Administration Act 1992 are not capable of modification under the enabling powers of section 179(1) and section 179(2) of that Act. By way of background, the Orders relate to implementing reciprocal agreements in relation to DWP and HMRC benefits.

3. We have taken the limitations in the fullout words of section 179(4) into account in giving effect to the reciprocal agreements on social security coordination. The benefits listed in the fullout words of section 179(4) are not either relevant or legislation does not need to be modified for the purposes of implementing the reciprocal agreements in respect of social security coordination. For example, community charge benefits are not relevant benefits for the purposes of social security coordination. However, Winter Fuel Payment is a benefit which falls within the fullout words of section 179(4) (as it is a payment out of the social fund) and it is a benefit payable under the Swiss Citizens' Rights and EFTA Citizens' Rights agreements. In this case, each Order will not be used to modify legislation using section 179(1) and section 179(2) to pay the Winter Fuel Payment. Instead existing

domestic legislation on Winter Fuel Payments (without modification) will be used to pay Winter Fuel Payments in order to give effect to the Swiss Citizens' Rights and EFTA Citizens' Rights agreements. In relation to statutory maternity pay and statutory sick pay, these are benefits paid by the employer in accordance with existing domestic legislation (without modification) and the Christmas Bonus is also paid under existing domestic legislation (without modification).

4. The fullout words are part of section 179(4), not paragraph (b) of section 179(4). They therefore also apply to the other paragraphs of section 179(4). The modifications made to the Social Security Contributions and Benefits Act 1992 by virtue of article 2(2)(b) of each Order also do not include modifications to the benefits listed in the fullout words. For example, paragraph (iii) of the fullout words refers to Christmas Bonus, which is provided under sections 148 to 150 of the Social Security Contributions and Benefits Act 1992.

5. In response to question 1(b), we believe that the Committee may be asking whether paragraph (4) is intended to apply only to Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (rather than Part II) in reference to section 179(4)(ad) of the Social Security Administration Act 1992. Paragraph (4) is intended to apply paragraph (1) to Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 in accordance with section 179(4)(ad) of the Social Security Administration Act 1992. The reference to "Part III" should have been included.

6. In response to question (2), the enabling power relied upon is section 179(1) (or more specifically section 179(1)(a)) as read with section 179(2). Article 2(1) is making general modifications (rather than specific modifications) to the legislation specified in Article 2(2) and Article 2(4) to give effect to the reciprocal agreement in the Schedule to each Order. We acknowledge that section 179(1) refers to "modifying or adapting" legislation whereas section 179(2) refers to legislation being "modified" or "*…to give effect to the provisions contained in the agreement or, as the case may be, alterations in question.*" The words "or adapted" should not have been included because we are not making adaptations. The words were not intended to add anything new to the word "modified" and should in practice be meaningless because of the wording of the enabling power.

7. We acknowledge that there is defective drafting in relation to each Order in respect of questions 1(b) and 2 and apologise. However, we do not think it is necessary to amend The Social Security (Iceland)(Liechtenstein)(Norway)(Citizens' Rights Agreement) Order 2019 because it is not in force. The Order was intended to implement the reciprocal agreement in the Schedule to the Order in the event there was no Withdrawal Agreement between the European Union and the UK under Article 50 of the Treaty on European Union (the "Withdrawal Agreement") as the reciprocal agreement only enters into force in the event there is no Withdrawal Agreement (Article 43(2) of the reciprocal agreement). As there is a Withdrawal Agreement in place, this Order is no longer necessary and we intend to revoke it.

8. In relation to The Social Security (Switzerland) (Citizens' Rights Agreement) Order 2019, this Order is not in force but may come into force on satisfying the later of the events at article 1(2). The Swiss Citizens' Rights Agreement does not come into force until the end of the transition period (and is not being provisionally applied). Therefore, should it

be necessary to amend the Order in light of the Committee's findings, we do not propose to make immediate changes to this Order but we will keep this position under review and either modify it at an opportune moment if it comes into force or revoke it.

9. The Committee might like to note that Northern Ireland has separate orders made under section 155 of the Social Security Administration (Northern Ireland) Act 1992 to modify Northern Ireland legislation in respect of Swiss and EFTA agreements: The Social Security (Switzerland) (Citizens' Rights Agreement) Order (Northern Ireland) 2019 S.R.2019/212 and The Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order (Northern Ireland) 2019 S.R. 2019/211. These orders have been drafted in substantially the same terms and so similar points may arise. We will share the findings of the Committee with our Northern Ireland colleagues.

Department for Work and Pensions

13 February 2020

Appendix 2

S.I. 2019/1335

Registered Designs and Trade Marks (Isle of Man) (Amendment) (EU Exit) Order 2019

1. In its letter to the Department of 6 February 2020, the Committee requested a memorandum on the following:

> *Confirm that paragraph 5 of Schedule 2 purports to amend provisions that are not found in paragraph 5 of the Schedule to the Trade Marks (Isle of Man) Order 2013.*

2. The Department's response to the Committee's point is set out below.

3. This Order introduces amendments to how the Trade Marks Act 1994 and the Registered Designs Act 1949 apply to the Isle of Man.

4. Schedule 2 to this Order contains amendments to the Trade Marks (Isle of Man) Order 2013 ("the 2013 Order") as amended by the Trade Marks (Isle of Man) Order 2018 ("the 2018 Order").

5. Paragraph 5 of Schedule 2 contains purported amendments to paragraph 5(2) of the Schedule to the 2013 Order. However, as the Committee has correctly identified, paragraph 5 of the Schedule to the 2013 Order does not have a subparagraph (2).

6. It appears that, in seeking to amend paragraph 5 of the Schedule to the 2013 Order, the drafter erroneously drafted amendments to paragraph 6 of the Schedule to the 2018 Order (which amends paragraph 5 of the Schedule to the 2013 Order).

7. This has two consequences. Firstly, paragraph 5 of Schedule 2 to this Order contains references to provisions that do not exist. Secondly, provisions of the 2013 Order which ought to have been amended have not been amended.

8. The Department apologises and acknowledges that this drafter error should have been picked up in the checking processes before this Order became law.

9. By way of correction, the Department will produce an amending instrument which will amend this Order by substituting a new paragraph 5 of Schedule 2.

10. The Department is grateful to the Committee for bringing this matter to its attention.

Department of Business, Energy and Industrial Strategy

10 February 2020

Appendix 3

S.I. 2019/1367

Magistrates' Courts (Amendment) Rules 2019

1. By a letter dated 6 February 2020, the Committee sought a memorandum on the following points:

> *(1) When is a summons served in accordance with paragraphs (1)(e) and (j) of new rule 99 inserted by rule 8 deemed to have been received by the person?*
>
> *(2) Explain what criteria are intended to be applied in determining whether a person holds a "senior position" for the purposes of new rule 99(1)(a) (inserted by rule 8 of this instrument) and new rule 115(2)(a) (inserted by rule 10 of this instrument) and how effect is to be given to that intention (including, in particular, whether it is proposed to issue guidance similar to Practice Direction 6A).*

2. The Ministry of Justice's response is set out below.

3. In relation to the *first point,* the response is as follows—

4. The mode of electronic service for which new rule 99(1)(e) and (j) provides is considered to result in actual service such that no issue of deemed service arises. This is because service by this method is fully achieved as a three-part electronic transaction. The act of service is constituted by the deposit of the process at the electronic address and making it possible for the recipient to access it and notifying the defendant that the process has been so deposited.

5. The reasoning for not including deemed service provisions is that any computer system operating normally will as part of its normal operation show the actual date of access by the recipient, and the email system will similarly show when the notification was sent, so actual service can be proved in this case.

6. In the interests of certainty and consistency with other provisions, however, the Ministry does see an argument for a fallback provision deeming service to have been effected by a specified time after the notification was sent, for example or the actual time the document is shown to have been read, viewed or listened to according to the computer system used, or, in any event, 24 hours after the notification was sent. The Ministry will consider whether such a provision should be included in due course, after appropriate consideration and consultation.

7. In relation to the *second point* concerning service on a "senior person" within a corporation, there is no associated explanation of what "senior person" means within the Magistrates' Courts Rules 1981. It was not considered necessary to add a definition, since the Criminal Procedure Rules (from which the service provisions were derived as being well established in a magistrates' court context) have operated similarly for over a decade without a definition and without any evidence of the issue having given rise to difficulty in the operation of the rule. The Ministry considered that the definition for other

civil proceedings in paragraph 6.2 of Practice Direction 6A (service within the United Kingdom) supporting the Civil Procedure Rules was not a complete exclusive description, and felt that to avoid the risk of too narrow a definition being applied, it was better to leave the term undefined so that it could be interpreted in accordance with the normal English meaning, as it has in the context of criminal proceedings.

8. The MoJ is most grateful to the JCSI for the opportunity to provide clarification via this memorandum, and will undertake research and consultation in order to determine whether provision should be made in relation to this issue when the Rules are next amended.

Ministry of Justice

11 February 2020

Appendix 4

S.I. 2019/1368

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5A and Miscellaneous Amendments) Rules 2019

S.I. 2019/1369

Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5B) Rules 2019

1. By a letter dated 6 February 2020, the Committee sought a memorandum on the following points:

> *(1) In relation to rule 10(1) of S.I. 2019/1368 and rule 9(1) of S.I. 2019/1369 and having regard to the Memorandum of the SI Hub (Provisions in statutory instruments providing for an address to be the "proper address" for the purposes of section 7 of the Interpretation Act 1978) explain what is meant by the wording "properly addressing".*
>
> *(2) In relation to rule 9 of S.I. 2019/1368 and rule 8 of S.I. 2019/1369, is it intended that a person has a right to effect personal service without the permission of the courts and how is effect given to that intention?*

2. The response of the Ministry of Justice and Home Office is set out below.

3. The background to the drafting of these two instruments and the inclusion in them of the provisions concerning service of documents is of importance in explaining the intended meaning and effect of those provisions. As indicated in the Explanatory Memorandum for each instrument, these instruments are intended to mirror as exactly as possible, for their context of external requests and orders, the provisions of the corresponding instruments (S.I. 2017/1293 and S.I. 2017/1297—"the 2017 instruments") governing practice and procedure for the corresponding purely domestic proceedings under the Proceeds of Crime Act 2002. The provision about service of documents accordingly mirrors exactly that in the earlier instruments. The provision about service in those earlier instruments was itself derived from an earlier instrument (S.I. 2015/857—"the 2015 instrument"), which made provision about how "forfeiture notices" under the Proceeds of Crime Act 2002 are to be given. The corresponding provisions of the two 2017 instruments (and therefore of the two instruments which are the subject of this memorandum) mirror exactly those of the 2015 instrument save for the addition of the possibility of being able to give a document by a method authorised by the court.

4. In relation to the *first point,* the response is as follows—

5. The 2015 instrument was made under provision in section 297A of the Proceeds of Crime Act 2002 requiring the Secretary of State to make regulations about "how a notice is to be given". In relation to giving the notice by post, the 2015 instrument used the same words as the two 2017 instruments and the two instruments which are the subject of this

memorandum, providing the method of giving the document or notice to be by "properly addressing, pre-paying and posting" it to the address given by the intended recipient, but also providing that if no such address has been given, the document or notice must be "sent to an address which is shown in the following table".

6. It can be seen from this that that the method of sending is by "properly addressing, pre-paying and posting" to the address provided for the purpose by the recipient, or in default of that, to the relevant address in the table. The provision uses the same wording as section 7 of the Interpretation Act 1978; and paragraph (3) of the rule deals with when the document is deemed to have been given. The effect, in the view of the Ministry of Justice and Home Office, is that section 7 is displaced by a provision which covers the same ground in essentially the same words, which in that specific context have the same meaning as in section 7. In this specific context, "properly addressing" is separate from the address to which the document or notice is to be sent (that given by the recipient, or, in default of that, the relevant address in the table), and there is no provision that the address given is the "proper address". "Properly addressing" here, therefore, will mean addressing a document in a manner that can reasonably be processed by the postal system. That appears to the Ministry of Justice and Home Office to be entirely consistent with the SI Hub's memorandum.

7. In relation to the *second point,* the response is as follows.

8. The 2015 instrument was drafted so as to exclude personal service of a forfeiture notice altogether, and the explanatory memorandum to that instrument explains that the methods of giving such a notice are by post and by electronic means, or, where the notice cannot be given in those ways, by publication in the *London Gazette*. This has been replaced by provision in the 2017 instruments, carried through for the present instruments by the mirroring approach explained above, of allowing for documents to be given by post, by electronic means, or any method authorised by the court.

9. The intention has been to mirror, except for that additional possibility of a method of service authorised by the court, the approach settled by the 2015 instrument; and so the answer to the JCSI's query is that there was no intention to make personal service possible other than if authorised by the court. In the context of the rules, this is not thought to create a practical difficulty, since all but two of the instances across both of the present instruments of a requirement to give a document place the onus to give that document on the court. The Ministry of Justice and Home Office will, however, consider whether there should be a change in the approach to permit personal service as a "primary" method of service without any need for the court to authorise it, and will make appropriate amendments at a suitable opportunity if the conclusion is that there should be such a change.

Ministry of Justice

Home Office

11 February 2020

Appendix 5

S.I. 2019/1384

Accreditation of Forensic Service Providers (Amendment) Regulations 2019

1. The Home Office has considered the following queries raised by the Committee in respect of this instrument:

> *Having regard to the cumulative effect of the new definition of "relevant employee" and the final limb of new regulation 4(2A) (inserted by regulation 2(3)), explain*
>
> *(1) whether the "relevant employee" (defined in regulation 2(2)(c)) is required to have a certain level of competence and experience; and*
>
> *(2) whether the supervision required by the final limb of new regulation 4(2A) is intended to impose a requirement that the relevant employee be present when the laboratory activity is carried out.*

Response

2. In respect of the Committee's first question, the drafting does not specify that a particular level of competence and experience is required. The individuals who will be supervising these tasks will work in a variety of laboratories, and it is not possible to determine a specific grade or rank which would apply across all of those institutions and which would universally represent an appropriate level of competence. The policy intention was that competence to perform the particular task should be the defining criteria for the individuals who will supervise laboratory activity. The Department considers that this competence is the key consideration for the individuals who will supervise activity, irrespective of the relative seniority by grade or rank, or years of experience of the individual concerned. This policy intention is met in our view by the requirement in Regulation 2(2)(c) of S.I 2019/1384, which ensures that supervision is carried out by individuals who are deemed competent by the accredited laboratory which employs them to carry out the task they are supervising.

3. On the second question raised by the Committee, the Department confirms that the drafting is not intended to impose a firm requirement that the relevant employee be physically present when carrying out supervision. The policy objective is that the laboratory activity being carried out in the relevant laboratories should be supervised effectively. In practice, supervision is carried out in person, wherever possible. However, given the nature of the materials being examined in these laboratories, in some cases it is necessary for supervision to be carried out via a video link from a safe space. This is determined on a case by case basis, based on the hazard posed by the contaminated item in question.

Home Office

10 February 2020

Appendix 6

S.I. 2019/1428

M11 Motorway (Junctions 8 to 90 (Offside Lane Restriction) Regulations 2019

1. By a letter dated 5th February 2020 the Joint Committee on Statutory Instruments requested a memorandum on the following point:

> *Is it the intention of the reference to "inconvenience to other traffic" in regulation 3(2)(a) that the exception applies when another traffic user would have to reduce speed.*

2. Yes, that is the intention but the Department believes that the exception is likely to apply only in limited circumstances in so far as inconvenience to other traffic is due solely to a reduction in its speed.

3. The circumstances might include those where—

   a) in congested conditions traffic in the nearside lane is moving faster than that in the offside lane; or

   b) the driver of a lorry is aware of an emergency services vehicle approaching in the nearside lane and a change to that lane would delay the progress of that vehicle in reaching an emergency.

4. The exception is similar to that which applies to motorway carriageways with three or more lanes in regulation 12(4) of the Motorways Traffic (England and Wales) Regulations 1982 (S.I. 1982/1163).

Department for Transport

11 February 2020

Appendix 7

S.I. 2019/1440

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019

1. The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 amended the Greenhouse Gas Emissions Trading Scheme Regulations 2012, which implement the EU Emissions Trading System ("EU-ETS") in the UK. The Schedule to the 2019 Regulations inserted new Schedule 5A to the 2012 Regulations, and in its letter to the Department of 5th February 2020, the Committee requested a memorandum on the following.

> *In new Schedule 5A, as inserted by the Schedule:*
>
> *(1) Explain why paragraph 3 does not provide for a notice to be given in relation to the first allocation period; and*
>
> *(2) Confirm whether the cross-reference to "the date specified in paragraph 2(2)(a) or (b)" is correct.*

2. In response to question 1, paragraph 3 of Schedule 5A allows operators of Article 27a installations[1] (which are otherwise excluded from the operation of the main EU-ETS) to notify the regulators of their preferred alternative permit should they exceed the maximum amount of emissions allowed for those installations in any scheme year. Paragraph 3 does not provide a specific deadline for a notice to be given in relation to the first allocation period because the initial deadline for doing so fell on 31st August 2019 (i.e. before the 2019 Regulations were made) and was therefore dealt with administratively. As such, no provision for a specific deadline was required. However, that does not preclude a notice from being given in relation to the first allocation period throughout that period.

3. By way of additional background, should an operator of an Article 27a installation prefer to re-enter the main EU-ETS in the event of exceeding the maximum amount of emissions, it may also wish to have access to the free allocation of allowances under the EU-ETS. Operators must apply for free allocation in accordance with the Free Allocation Regulation[2] and EU Member States are required to submit to the European Commission the list of installations covered by the ETS Directive[3] and applying for free allocation every five years. This is known as "NIMs data", or National Implementation Measures Data. For the first allocation period NIMs data was required to be submitted to the EU Commission on 30th September 2019. The notification by 31st August 2019 of operators' preferred alternative permit would have allowed them to engage with the regulators at an

1 "Article 27a installation" is defined in regulation 3(1) of the 2012 Regulations, by virtue of the amendments made to that regulation by regulation 3 of the 2019 Regulations.

2 Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8–69).

3 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32–46).

early stage, and, if the operators wished to have access to free allocation, to provide the full verified NIMs submission required to apply for free allocation by the deadline of the NIMs data collection.

4. In response to question 2, the Department acknowledges that the cross-reference to *"the date specified in paragraph 2(2)(a) or (b)"* in paragraph 5(3) of the new Schedule 5A was incorrect. The Department has already corrected the error in the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2020[4] (S.I. 2020/18). Paragraph 5(3) of the inserted Schedule 5A now refers to the "notification of the operator's preferred alternative permit in accordance with paragraph 3".

5. We trust that the explanations above provide some assurance to the Committee.

Department for Business, Energy & Industrial Strategy

10 February 2020

4 S.I. 2020/18.

Appendix 8

S.I. 2019/1441

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2019

1. The Committee has requested the department to submit a memorandum on the following point:

> *Explain by whom and by reference to what criteria it is intended to be determined whether a person is of "appropriate skill and experience" for the purposes of article 7 (inserted articles 18(2)(c) and (d) and 6(b)).*

2. The Department's response to the Committee's point is set out below.

3. Under article 13(1)(f) of the Electricity and Gas (Energy Company Obligation) Order 2018 (S.I. 2018/1183), which S.I. 2019/1441 amends, the Administrator (Ofgem) must be satisfied that a measure meets the requirements of article 18. This would include being satisfied that the measure is installed by a person of appropriate skill and experience (in the case of a measure not referred to in the Publicly Available Specification (PAS)).

4. The PAS sets detailed installation standards for most of the measures delivered under the Energy Company Obligation (ECO) scheme. To ensure the ECO scheme imposes an installation standard for measures not covered by the PAS, the requirement for the measures to be installed by a person of "appropriate skill and experience" applies. Similar requirements have been included since the first iteration of the ECO scheme in 2012.

5. Ofgem has issued a range of guidance on how it administers the ECO scheme. Ofgem has recently consulted on its proposed administration of the ECO scheme following the amendments made by S.I. 2019/1441. As part of that consultation it published draft guidance on scheme delivery, reflecting proposed updates to its existing guidance. This draft guidance applies to all measures installed on or after 1 January 2020, pending publication of the final version. In relation to installation standards, the draft guidance states that for measures not covered by PAS, they should be installed in accordance with building regulations and any other regulations that relate to the installation of the measure. There is further specific guidance for microgeneration and boiler measures in paragraphs 2.77, 11.25 and 11.26 of the draft guidance. The guidance can be found following this link: https://www.ofgem.gov.uk/system/files/docs/2019/11/eco3_guidance_delivery_v1.3_draft_for_comment_5_0.pdf.

Department for Business, Energy & Industrial Strategy

10 February 2020

Appendix 9

S.I. 2019/1461

Anguilla Constitution (Amendment) (No.2) Order 2019

1. The Joint Committee on Statutory Instruments has asked why (and in reliance on what power) the change effected by article 2 of The Anguilla Constitution (Amendment) (No. 2) Order 2019 (S.I. 2019/1461) (the "**Order**") is retrospective.

Background

2. Article 2 of the Order clarifies that certain persons must be British overseas territories citizens in order to qualify as Anguillians.

3. Although it is not the same as nationality or citizenship, Anguillian status can be considered the equivalent of local 'citizenship' in Anguilla and certain rights are conferred on holders of such status. The British overseas territories citizenship criterion for one limb of the test for Anguillian status was unintentionally omitted from The Anguilla Constitution (Amendment) Order 2019 (S.I. 2019/852). This left a period of time within which certain persons were eligible for Anguillian status without also having to be British overseas territories citizens.

Reason for retrospectivity

4. The retrospective nature of article 2 was requested by the Government of Anguilla in order to ensure legal certainty and clarity about the state of the law concerning the acquisition of Anguillian status at all times. Although at the time of the sending of final papers to the Privy Council, the Government of Anguilla was not aware of any applications having been made for Anguillian status that would have been impacted by the omission identified above, retrospection was designed to ensure certainty on this important matter, including for the period between sending the final papers to the Privy Council and the coming into force of the Order. The Order was agreed by the Government of Anguilla and approved by the Anguillian Attorney General.

Power relied upon

5. The power relied upon to make retrospective provision is s.1(2) of the Anguilla Act 1980, which states: *"Her Majesty may by Order in Council make such provision as appears to Her expedient for and in connection with the government of Anguilla"*.

6. In this context, Article 9 of The Anguilla Constitution Order 1982,[5] which is made under the Anguilla Act is also relevant. It states: *"Her Majesty reserves to Herself power, with the advice of Her Privy Council, to makes laws for the peace, order and good government of Anguilla."* A power to legislate for the purposes of peace, order and good government has been held to be a plenary law making power and the courts will not inquire into whether legislation was in fact for the purposes of peace, order and good government.[6] This power therefore includes the ability to make retrospective provision.

5 S.I. 1982/334, as amended.

6 See *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61 per Lord Hoffman at para. 50, Lord Rodger at para. 109 and Lord Carswell at para. 130.

7. This is confirmed by the 1964 case of *Sabally and N'Jie v Attorney General,* where the Court of Appeal found that the British Settlements Acts 1887 and 1945 allowed Her Majesty to make retrospective provision by way of Order in Council in respect of The Gambia.[7] Although that case considered the British Settlements Acts 1887 and 1945, which are in slightly different terms to the Anguilla Act, the differences do not appear to be material for this purpose.

Foreign and Commonwealth Office

11 February 2020

7 *Sabally and N'Jie v Attorney General* [1965] 1 QB 273 per Lord Denning MR (p.295 D–G), Harman LJ (p.297 F) and Russell LJ (p.298 B–D).

Appendix 10

S.I. 2019/1474

Fishery Products (Official Controls Charges) (England) (Amendment) Regulations 2019

1. The Committee requested a memorandum in response to the following point in relation to the above-mentioned instrument:

> *Explain why regulation 3(a) and the Schedule create a new defined term, "Regulation 2019/624", which is not used anywhere else in the instrument being amended.*

2. We note the inadvertent inclusion of a superfluous defined term in the instrument. We will take steps to remove the defined term at the earliest opportunity by way of a future amending instrument.

Food Standards Agency

10 February 2020

Appendix 11

S.I. 2019/1476

Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019

1. The Committee requested a memorandum in response to the following point in relation to the above-mentioned instrument:

> *(1) Confirm that the new definition in regulation 3(a)(ii) should have contained a cross-reference to the definitions of EU legislation in Schedule 1.*

2. We can confirm that a cross-reference should, indeed, have been included in regulation 3(a)(ii). The omission was inadvertent. We apologise to the Committee that this was overlooked during the drafting and checking of the instrument. We will ensure that the missing cross-reference is included by way of a future amending instrument at the next available opportunity.

Food Standards Agency

18 February 2020

Appendix 12

S.I. 2019/1511

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

1. The Committee considered the above instrument at its meeting on 5 February 2020 and subsequently requested that the Treasury submit a memorandum to address the following point:

> *In regulation 8(4) (inserted regulation 74C), explain why the provisions in regulation 74C(9) to (16) and (20) do not apply to a direction imposed under regulation 74C(1).*

2. The provisions in regulation 74C(9) to (16) and (20) are supposed to apply to a direction imposed under regulation 74C(1), where the FCA imposes the direction on its own initiative. Paragraphs (5) and (6) of the regulation are not intended to be distinct from the power referred to in paragraph (1) but rather to particularise the manner in which such a direction may be imposed. The FCA will only impose a direction on its own initiative, in which case paragraphs (9) to (16) and (20) will apply, or on the request of a cryptoasset business, in which case paragraphs (17) to (20) will apply.

3. The Treasury accepts that regulation 74C could have been clearer in this respect and will amend the instrument at the earliest opportunity.

HM Treasury

11 February 2020

Appendix 13

S.I. 2019/1514

Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019

1. In its letter of 6 February 2020, the Committee requested a memorandum on the following points. We have inserted the information requested after each of the points raised:

> *(1) In relation to the amendments made by regulation 15, explain why the option to have a humanist celebrant conduct the ceremony, reflected by new Part F of the form of marriage notice as inserted by regulation 15(k), is not reflected in the declaration at the end of the form.*

2. The Department acknowledges the Committee's observation on the Marriage Notice form, which is prescribed in Schedule 1 to the Marriage Regulations (Northern Ireland) 2003, and is amended by regulation 15(2)(k) of the Regulations. In particular, the Department acknowledges that the Declaration in the form makes a cross-reference to the name of the officiant who may be named in Part E, but does not make a cross-reference to the humanist celebrant who may be named in Part F.

3. The Department acknowledges this discrepancy and will work with the Northern Ireland Executive to ensure that the necessary amendments to the prescribed form are made.

> *(2) In relation to regulation 56(6)(c), clarify which enabling power is relied on to amend the Treasury's rule-making power to one that can make different provision for different purposes, and why that amendment is necessary.*

4. The enabling powers relied on are s.8(3), (4)(c) & (7)(d) read (if necessary) with s.11 of the Northern Ireland (Executive Formation etc) Act 2019 (the 2019 Act).

5. Regulation 56(6)(c) makes amendments to a rule-making power rather than a regulation-making power. Section 8(7)(c) of the 2019 Act is, strictly speaking, limited to conferring powers to make regulations, rather than rules. The regulations do not confer the power, but make provision about its exercise.

6. However, on reflection the Department has concluded that, strictly speaking, this amendment was not necessary for the following reasons: the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960, as an Act of the old Northern Ireland Parliament, is governed by the Interpretation Act (Northern Ireland) 1954; section 17(5) of the 1954 Act already gives the power purported to be given by the new section 12(3A); and "Statutory instrument" as used in s.17(5) of the 1954 Act is defined by section 1(a), (c) & (d) of that Act and clearly includes Treasury rules under the 1960 Act. Therefore the new s.12(3A) is therefore merely declaratory and, although therefore intra vires under s.8(3), (4)(c) & (7)(d) read (if necessary) with s.11, is strictly unnecessary.

7. The Department acknowledges the error in including an unnecessary provision.

> *(3) Clarify the specific enabling powers relied on and the reasons for the amendments made by regulations 67(1) and 109(1).*

8. The enabling power relied on is section 8(3) of the 2019 Act.

9. The amendments made by regulations 67(1) and 109(1) omit provisions concerning the competence and compellability of spouses. The reason for the removal of these provisions was to ensure that the new categories of relationships are brought into line with existing civil partners. It was appropriate in view of the extensions to produce a uniform code for all couples, hence the repeals. The background is that there were provisions that necessarily did not currently apply to the new categories of relationships and had not been extended to same-sex civil partners.

> *(4) In relation to regulation 68(6) (new regulation 34A(5)), clarify which specific enabling powers are relied on to confer the power to "modify or disapply any enactment".*

10. The policy intent behind this provision was to stick as closely as possible to section 38A of the Pension Schemes Act 1993 (which is the GB regime) to maintain parity with GB.

11. Although the regulations could have directly amended the enactments mentioned in new 34A(5) (see s.8(3), (4)(c) & (7)(d) read, if necessary, with s.11 of the 2019 Act) and although there are powers to confer regulation-making powers on the Northern Ireland Department (or anyone else), on reflection it appears to the Department that the better argument is that there was no power to confer power on the Northern Ireland Department to amend primary legislation in the exercise of the regulation-making powers.

12. The Department acknowledges this error. Section 34A(5) vests in the Northern Ireland Department of Communities (NIDC), the Department will liaise with NIDC to ensure that it is aware of this issue in terms of any future exercise of the powers under s34A and of the need to rectify the position.

> *(5) In relation to regulation 122(3) (new rules 4.79A to 4.79C) explain:*
>
> a) *how a surviving civil partner will determine whether benefits apply to them as a widow or widower (particularly given that new rule 4.79A provides that it does not matter whether either the civil servant or their partner is a man or a woman); and*
>
> b) *whether the gloss imposed by these new rules is intended to apply to the phrases "a widow forms a civil partnership or was living or begins to live with a woman as her civil partner" in paragraph 4.5 and "a widower forms a civil partnership or was living or begins to live with a man as his civil partner" in paragraph 4.24b so that they include opposite-sex civil partnerships between the surviving civil partner and a third party, and if so how this is achieved.*

13. In relation to question 5(a), the new rule 4.79A works against the background of the new 4.87, so that without 4.79A the references in 4.79 to 'civil partners' would be limited to same-sex civil partners. Rule 4.80 says that surviving civil partner pensions are calculated by reference to service on and after 6th April 1988. Widow and widower's civil service pensions under the 1972 Section are equalised so far as based on post-5th April 1988 service, so there is no difference between widows' and widowers' entitlements to that extent. As entitlements for civil partners also relate only to post-5th April 1988 service, the same outcome is achieved whether they are matched with widows' entitlements, or widowers' entitlements, by reference to such service. The second half of 4.79A is about preventing double entitlement.

14. New rule 4.79A is based on rule 4.76A of the 1972 Section of the main UK civil service pension scheme. Wherever possible, the Department has sought to keep NI in line with the rest of the UK for pensions when making the changes relating to same-sex marriage and opposite-sex civil partnership.

15. In seeking to respond to question 5(b), it has been brought to the Department's attention that there is a further set of Scheme amendments dated 2016. The Department was not aware of these amendments at the time, hence why these 2016 amendments were not footnoted. The Department is urgently seeking clarification from the Northern Ireland Executive as to whether there are any other post 2015 amendments which are not listed on its website and to determine whether the provisions on which the Committee has been commenting have been overtaken by the 2016 and any other amendments. The Department acknowledges this serious error and will take necessary steps to amend the regulations as soon as possible.

> *(6) In relation to regulation 133(3) (new Article 35A), explain how actions could be imputed to "an organised religion" – as distinct from a corporation, an unincorporated body, or an individual professing the religion – so as to contravene Article 30(1) of the Sex Discrimination (Northern Ireland) Order 1976.*

16. Article 30 of the 1976 Order is about discrimination by "any person". The Interpretation Act (NI) 1954 applies for the purposes of the 1976 Order: see Article 2(1) of the 1976 Order. Section 37(1) of the 1954 Act says: *"Words in an enactment importing (whether in relation to an offence or otherwise) persons … shall include male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons."*

17. In addition, section 37(2) of the 1954 Act says that the singular includes the plural (and vice versa). So Article 30 also covers discrimination by any persons, including unincorporated bodies of persons.

18. The point of our amendment was to prevent liability arising and to do so in a way that leaves no loopholes. It is certainly arguable that, even if an organised religion is not a body corporate (and therefore a singular person), its adherents are "persons" or an unincorporated body of persons. And some individual independent churches may have a membership structure and rules like a club/unincorporated association. Accordingly, if goods, services or facilities are withheld because of a policy to which adherents of the religion (or members of the church) subscribe, e.g. a policy to provide marriage-related services only for opposite-sex couples, that is potentially discrimination "by persons"

covered by Article 30, and the policy behind the amendments was to ensure that it was clear that bodies of practising believers could not be liable under Article 30. "Organised religion" was used, undefined, for consistency with Article 21.

> *(7) Explain why regulations 159 and 160 amend the definition of "relative" in different ways, given that the same definition is used in each of the instruments being amended.*

19. The Department confirms that this was not intentional. The Department undertakes to correct this by amending regulation 159 so that the definitions align in both instruments.

Northern Ireland Office

11 February 2020

Appendix 14

S.I. 2019/1351

Local Government Pension Scheme (West Midlands Integrated Transport Authority Pension Fund and West Midlands Pension Fund Merger) Regulations 2019

1. The Committee has requested a memorandum on the following points:

> *Explain how any decisions concerning the rights or liabilities of any person under the 2013 Regulations or the Earlier Regulations which were made by the Combined Authority before the merger date and which are still open to challenge are to be dealt with?*

2. Regulation 2(1)(b) of the Local Government Pension Scheme (West Midlands Integrated Transport Authority Pension Fund and West Midlands Pension Fund Merger) Regulations 2019 (the 2019 Regulations) modifies the Local Government Pension Scheme Regulations 2013 (the 2013 Regulations) to provide that Wolverhampton City Council is the appropriate administering authority for any person for whom the appropriate administering authority had been or would be the Combined Authority. Wolverhampton City Council will therefore assume the responsibilities of the Combined Authority for the purposes of decisions concerning the rights or liabilities of any person under the 2013 Regulations, or under the Earlier Regulations, which were made by the Combined Authority before the merger date. The Department provides a summary of how these decisions are dealt with at paragraphs 3 to 6 below.

3. Regulation 72(3) of the 2013 Regulations makes provision for the appropriate administering authority to decide questions concerning the rights or liabilities under the Scheme established by the 2013 Regulations of any person other than a Scheme employer concerning:

- a person's previous service or employment;
- the crediting of additional pension under regulation 16 (additional pension);
- the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

Regulation 73 requires that the administering authority notify a person whose rights or liabilities are affected by a decision under regulation 72 as soon as is reasonably practicable after the decision is made.

4. Regulation 74(1) of the 2013 Regulations requires the administering authority to appoint an adjudicator to consider applications from any person whose rights or liabilities under the Scheme are affected by a decision by the administering authority under regulation 72(3), or by any other act or omission by an administering authority. A person may apply to the adjudicator appointed by the administering authority within six months of the date notification of the decision is given under regulation 73, or within six months of the date of the act or omission which is the cause of disagreement, as the case may be. The adjudicator may extend the time limits for making an application (regulation 74(4)).

5. The adjudicator must give written notice of a decision under regulation 74 to the applicant and the administering authority (regulation 75(1) of the 2013 Regulations). The person applying to the adjudicator may refer a decision under regulation 75 for reconsideration by the appropriate administering authority (regulation 76). The administering authority must give written notice of its decision after reconsideration (regulation 77).

6. Regulation 23 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the 2014 Regulations) provide that regulations 72 to 80 of the 2013 Regulations apply in respect of questions not finally determined by 1st April 2014 concerning the rights and liabilities of a person under the Earlier Schemes (as defined in regulation 1(6) of the 2014 Regulations).

7. In respect of decisions made under regulation 72(3) by the Combined Authority before the merger date, Wolverhampton City Council will assume the responsibilities of the Combined Authority for the purposes of applications to the adjudicator under regulation 74, and for any notice and reconsideration requirements under regulations 75 to 77. The adjudicator appointed by the Combined Authority remains in post to consider decisions of the Combined Authority under regulation 72(3), as well as equivalent decisions by Wolverhampton City Council.

8. Regulation 3(5) of the 2019 Regulations further requires that Wolverhampton City Council will be substituted for the Combined Authority in any legal proceedings which relate to any of the Combined Authority's functions as an administering authority which were made or commenced before the merger date, including any legal proceedings concerning decisions made under regulation 72(3) by the Combined Authority before the merger date.

Ministry of Housing, Communities and Local Government

10 February 2020